IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	NO. 05-0257
DEVON MONROE SMITH	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J. OCTOBER 24, 2005

I. INTRODUCTION

Defendant Devon Monroe Smith is charged with one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(c). Defendant filed a motion to suppress evidence on August 1, 2005 (doc. no. 25) and the Government responded (doc. no. 27). Defendant argues that the impoundment of the vehicle occupied by Defendant, which led to the discovery of the firearm and subsequent confession, was unlawful.

On October 6, 2005 the Court held oral argument on the motion to suppress. Officer Christopher E. Laser testified for the Government. The Government also offered into evidence the September 7, 2005 deposition of Officer Richard Heim, pursuant to Federal Rule of Civil Procedure 15 and without objection by Defendant. Gov't Ex. SH3. Officer Heim is currently deployed in Iraq and was unavailable for the hearing.

II. FACTUAL BACKGROUND

On June 8, 2004 at approximately 4:19 p.m., Officers Laser and Heim of the Lancaster City Bureau of Police were assigned to routine patrol duty in a marked police car. Heim Dep., 7:16-8:11; Supp. Hrg., 5:16-24. While on patrol, Officer Heim observed Defendant sitting in the front passenger seat of a white Ford Taurus automobile. Heim Dep., 5:24-8:11; Supp. Hrg., 6:10-19. Officer Heim was aware that Defendant had an outstanding bench warrant through the Lancaster County Sheriff's Department. Heim Dep., 6:24-7:15, 18:25-20:6. Officer Heim previously reviewed the police lineup book, which listed outstanding warrants, and saw Defendant's name and photo. Id. The officers pulled over the vehicle. Supp. Hrg., 6:23-7:11.

Officer Heim observed Officer Laser in a physical altercation with the driver of the automobile, Danny Santiago. Heim Dep., 11:19-12:8; Supp. Hrg., 9:16-10:20. As Officer Heim ran to assist Officer Laser, Defendant fled the scene. Heim Dep., 12:9-24; Supp. Hrg., 11:6-19. Defendant was retrieved and arrested on the outstanding bench warrant. Heim Dep., 12:9-24; Supp. Hrg. 11:20-22. Mr. Santiago was arrested as well. Supp. Hrg., 11:23-25. Defendant and Mr. Santiago were taken back to the police station. Heim Dep., 26:17-27:19.

Officer Heim remained at the scene and decided to impound the Ford Taurus. Id. at 28:2-12. The vehicle was

brought to the police station. Supp. Hrg., 12:1-10. On June 8, 2004 at around 7:00 p.m., Officer Laser began an inventory search of the vehicle to account for valuables and to protect other property inside of the vehicle, pursuant to a written city police department policy. Id. at 12:23-13:10. When he opened the glove compartment, Officer Laser saw a black Glock, 9mm semi-automatic handgun. Id. at 15:17-16:1. Officer Laser stopped the inventory search, and applied for and obtained a search warrant for the Ford vehicle. Id. at 16:2-17:7. During the execution of the search warrant, Officer Laser seized the pistol, which was loaded with ten live rounds of ammunition. Id. at 19:6-20.

Later that same day, after Defendant waived his Miranda rights, Defendant admitted to loading the handgun, placing the handgun in the glove compartment, and knowing that he was a convicted felon and thus not permitted to possess the firearm. On May 3, 2004 the Grand Jury charged Defendant with one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(c).

III. DISCUSSION

Defendant filed a motion to suppress the firearm and post-arrest statement (doc. no. 25). Defendant argues that the justification for the warrantless search of the vehicle was inadequate. While Defendant asserted in his brief that both the impoundment and the inventory search itself were unlawful, at

oral argument, Defendant narrowed the issue and challenged only the impoundment. Supp. Hrg., 39:20-40:2. Specifically, Defendant argues that: (1) the police department had no policy or standardized practice in place for the impoundment of vehicles, and (2) the removal of the vehicle for an inventory search merely because neither the Defendant nor the driver were the owners of the vehicle is not a legitimate ground. Thus, Defendant contends, the gun obtained through the inventory search should be suppressed, as should the confession "obtained through exploitation of the illegally seized evidence."

Defendant first argues that the Lancaster County Police Department failed to have a written policy or an established routine that governed the decision to impound a vehicle. Defendant points to United States v. Duguay, 93 F.3d 346 (7th Cir. 1996), to support his argument. In Duguay, the Seventh Circuit held that a police department must have standardized criteria to determine when a vehicle should be impounded. Id. at 351. The standardized criteria may either be delineated in a written policy or evidenced through a "standardized routine." Id. (quoting Florida v. Wells, 495 U.S. 1, 4 (1990)).

In Duguay, the Alton police department did not have a written policy in place. Id. The court then looked to the officers' testimony to determine if a "standardized routine" existed within the department. Id. One officer testified at the

suppression hearing that all vehicles are impounded after the person in control of the vehicle or the owner is arrested. Id. at 351-52. Another officer testified at the suppression hearing that any time an occupant of a vehicle is arrested (regardless of whether they are in control or the owner), the vehicle is impounded. Id. at 352. Then at trial, the first officer altered his initial testimony and testified consistently with the second officer, that any time an occupant is arrested the vehicle is impounded. Id. The court held that based on these inconsistencies, the Alton impoundment policy was not sufficiently standardized. Id.

The instant case is distinguishable. Even if there is not a sufficient written policy, a matter which the Court does not address here, the Court holds that there is a "standardized routine" that is followed by the officers of the Lancaster City Bureau of Police. The testimony of Officer Heim and Officer Laser is entirely consistent on this point. According to Officer Heim, when the vehicle cannot be removed by an occupant, the police will impound it. Heim Dep., 28:12-29:2. Similarly, Officer Laser testified that when no occupant can "tak[e] responsibility for the vehicle, they will impound it." Supp. Hrg., 12:1-10. Defense counsel at oral argument conceded that both officers testified that they impounded the vehicle because "both occupants had been taken into custody." Id. at 38:21-23.

Accordingly, based on the consistent and credible testimony of the two officers, the Court holds that the department policy regarding impoundment rises to the level of a sufficiently "standardized routine," see Duguay, 93 F.3d at 351, to pass muster under the Fourth Amendment.[1]

Defendant next argues that even if the impoundment policy is sufficiently standardized, it lacks legal justification. Officer Heim testified that because both occupants of the vehicle were arrested and nobody was present to remove the vehicle, he decided to impound the vehicle,

> [b]ecause a lot of times we leave vehicles on the street and they end up being stolen later down the road. A lot of times these vehicles are loaned out for drugs and duplicate keys are made. It was just to insure that the rightful owner gets the vehicle back.

Heim Dep., 28:19-29:2. Likewise, Officer Laser testified,

> [W]e were unaware of who the actual owner was, with neither subject taking responsibility for the vehicle. And with where it was parked, the location where it was out, was not a location where we had a tendency to leave vehicles for non-residents

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[1] At oral argument, defense counsel suggested that the policy is infirm because it vested discretion upon the police officers whether to impound. Supp. Hearing, 39:8-19. The Court disagrees that police discretion is improper "so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of criminal activity." Colorado v. Bertine, 479 U.S. 367, 375 (1987). In this case, there is no suggestion that to the extent the officers exercised discretion, it was not fully consistent with the "standard criteria" or "on the basis of something other than suspicion of criminal activity."

> in that area, due to damage and vandalism. And also for our policy at that point, the car was in our custody, so we had a duty to care for it.

Supp. Hrg., 12:1-10.

The Court holds that the removal of the vehicle in these circumstances, where neither occupant of the vehicle could remove it, is not arbitrary or unreasonable and it is justified under Pennsylvania law. Under 75 Pa. Cons. Stat. § 3352(c)(2),

> Any police officer may remove or cause to be removed to the place of business of the operator of a wrecker or to a nearby garage or other place of safety any vehicle found upon a highway under any of the following circumstances:
> . . .
>
> (2) The person or persons in charge of the vehicle are physically unable to provide for the custody or removal of the vehicle.

75 Pa. Cons. Stat. § 3352(c)(2); see also United States v. 1988 BMW 750IL, 716 F. Supp. 171, 173-74 (E.D. Pa.), aff'd, 891 F.2d 284 (3d Cir. 1989) (holding that police properly seized vehicle under § 3352(c)(2) after stop of unlicensed drivers for motor vehicle violations); Commonwealth v. Woody, 679 A.2d 817, 819 (Pa. 1996) (authorizing post-arrest impoundment where no one was available to move the car, which was blocking the street); Commonwealth v. Martinson, 533 A.2d 750, 754 (Pa. Super. Ct. 1987) (authorizing post-arrest impoundment where both the driver and passenger were unfit to drive, the ownership of the vehicle

was uncertain, and the vehicle would have been stranded on the highway).

Further, as in these circumstances, where the police had the option to either leave the vehicle unattended without notifying the owner or to remove the vehicle, the police are permitted to remove the vehicle in the interests of public safety and efficient movement of traffic. In Pennsylvania,

> [t]he authority of the police to impound vehicles derives from the police's reasonable community care-taking functions. Such functions include removing disabled or damaged vehicles from the highway, impounding automobiles which violate parking ordinances (thereby jeopardizing public safety and efficient traffic flow), and protecting the community's safety.

Commonwealth v. Hennigan, 753 A.2d 245, 255 (Pa. Super. Ct. 2000).

Here, both occupants of the vehicle were arrested. Mr. Santiago told Officer Laser that he did not know where the car registration was located, nor did he know who owned the car. Supp. Hrg., 9:16-24. The vehicle was parked five to seven feet from the curb, thereby blocking traffic. Id. at 7:12-20. The vehicle was also obstructing a bus stop. Id. Additionally, the vehicle was located in a high-crime area and the officers sought to maintain the safety of the vehicle and its contents.

In these circumstances, removal of the vehicle falls within the statutory authority of the police under 75 Pa. Cons. Stat. § 3352(c)(2) and the authority derived from the community

care-taking function of the police.

Because the impoundment and inventory search was legitimate, Defendant's contention that the ensuing post-arrest statement "obtained as a product of an illegal search" must also be discarded. See Wong Sun v. United States, 371 U.S. 471 (1963).

IV. CONCLUSION

For the foregoing reasons, Defendant's motion to suppress evidence is denied. An appropriate order follows.

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O R D E R

AND NOW, this **24th** day of **October, 2005**, upon consideration of the motion to suppress evidence (document no. 25) filed by Defendant Devon Monroe Smith, it is hereby **ORDERED** that the motion is **DENIED**.

AND IT IS SO ORDERED.

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EDUARDO C. ROBRENO, J.